

REMARKS

The Applicants appreciate the thorough examination of the present application as evidenced by the Final Office Action of January 11, 2006 (hereinafter "the Final Office Action"). In particular, the Applicants appreciate the Examiner's withdrawal of all rejections from the previous Office Actions. In response to the Final Office Action, the Applicants will show in the following remarks that all claims are patentable over the cited art. Accordingly, the Applicants submit that all claims are in condition for allowance as discussed in greater detail below, and a Notice Of Allowance is respectfully requested in due course.

Statement Of Substance Of The Interview

The Applicants sincerely appreciate all courtesies extended by the Examiner in the telephonic interview of February 8, 2006. In the interview, the Attorney for the Applicants (Scott C. Hatfield) distinctions of Claim 1 with respect to the cited art. The substance of the interview is presented in the following remarks relating to Claim 1. The Applicants believe that this response satisfies all requirements of a written statement of the substance of the interview as set forth in 37 C.F.R. Sec. 1.133(b). If the Examiner should need any additional submission from the Applicants relating to the Interview of February 8, 2006, the Applicants respectfully request that the Examiner contact the undersigned attorney at his earliest convenience.

Independent Claims 1, 16, And 19 Are Patentable

Independent Claims 1, 16, and 19 have been rejected under 35 U.S.C. Sec. 103(a) as being unpatentable over U.S. Patent No. 6,766,526 to Ellis (hereinafter "the '526 patent") in view of International PCT Patent Application No. WO 99/60790 to Ellis et al. (hereinafter "the '790 publication"). The Applicants respectfully submit, however, that independent Claims 1, 16, and 19 are patentable for at least the reasons discussed below.

Claim 1, for example, recites a method for content transmission network selection in a system coupled in parallel through both of a broadcast network and a broadband network to a viewer location wherein the broadcast network and the broadband network are different. More particularly, the method includes:

identifying video programming content to be transmitted to the viewer location based on a transmission request;

selecting one of the broadcast network or the broadband network for transmission of the video programming content to the viewer location based upon characteristics of the transmission request comprising a future time at which the video programming content is requested to be viewed, the selection based at least in part on an option of delivering the video programming content either at a time that the request is received or at the future time; and

transmitting the video programming content on the selected one of the broadcast network or the broadband network to the viewer location coupled to both of the broadcast and broadband networks. (Underline added.)

The Office Action concedes that the '526 patent "is silent with respect to particular features corresponding to the ordering of video programming to be subsequently delivered." The Final Office Action, page 3. The Applicants respectfully submit that the '790 publication fails to provide the missing teachings.

The '790 publication, for example, fails to teach or suggest selecting one of a broadcast network or a broadband network for transmission wherein the selection is based at least in part on an option of delivering the video programming content either at a time that the request is received or at the future time. In support of the rejection, the Final Office Action states that the system of the '790 publication:

"selects one of the broadcast network or a broadband network" [32] for "transmission of the video programming content to the viewer location ... based upon characteristics of the transmission request comprising a future time at which the video programming content is requested to be viewed ... [and] at least in part on an option of delivering the video programming content either at a time that the request is received" (ex. start/view now) or "at the future time" (Page 23, Line 17 – Page 24, Line 10).

Final Office Action, page 3. As discussed in the '790 publication:

Once the viewer has requested a video-on-demand program, one or more configuration and control screens may appear which require viewer input to complete the order. ... Such data fields may include ... a program start-time field 86 and a start program now field 88.

The '790 publication, page 23, lines 3-12. Moreover:

If a selected video-on-demand program is not to start immediately, it may be fully or partially downloaded into local memory (e.g., in home storage device 35) to lessen the bandwidth required to transmit the program and/or may be transmitted during a non-peak time. A price discount may be offered for such "advance ordering" of a program.... (Underline added.)

The '790 publication, page 24.

The '790 publication thus discusses the use of a "program start-time" for timing of transmission, for provision of a discount, and/or for full/partial download into local memory. The '790 publication, however, fails to teach or suggest using a program start-time as a basis for selection of one of multiple networks for transmission of a selected video-on-demand program. Moreover, the '790 publication fails to teach or suggest network selection as discussed in greater detail in pages 13-14 of the Applicants' Amendment filed on October 25, 2006, the content of which is incorporated herein by reference only for the sake of conciseness.

As set forth in the Manual Of Patent Examining Procedure (MPEP), "the prior art reference (or references when combined) must teach or suggest all the claim limitations." MPEP, Sec. 2143. As noted above, the Final Office Action concedes that the '526 patent is silent with respect to "particular features corresponding to the ordering of video programming to be subsequently delivered." Of these features with respect to which the '526 patent is silent, the '790 publication fails to teach or suggest selecting one of multiple networks for transmission of a video programming based on an option of delivery either at a time that a request is received or at a future time. The combination of the '526 patent and the '790 publication thus fails to teach or suggest selecting one of a broadcast network or a broadband network for transmission based on an option of delivering the video programming content either at a time that the request is received or at the future time.

For at least the reasons discussed above, the Applicants respectfully submit that Claim 1 is patentable over the combination of the '526 patent and the '790 publication. The Applicants further submit that independent Claims 16 and 19 are patentable for reasons similar to those discussed above with regard to Claim 1. In addition, dependent Claims 2-15, 17-18, and 20-30 are patentable at least as per the patentability of Claims 1, 16, and 19 from which they depend.

Dependent Claims 25, 27, And 29 Are Patentable Over The Cited Art

Dependent Claims 25, 27, and 29 have been rejected under 35 U.S.C. Sec. 103(a) as being unpatentable over the '526 patent in view of the '790 publication, and further in view of U.S. Patent No. 6,438,110 to Rai et al. (hereinafter "Rai"). The

Applicants respectfully submit, however, that dependent Claims 25, 27, and 29 are patentable for the reasons discussed above with respect to independent Claims 1, 16, and 19 from which they depend. The Applicants further submit that dependent Claims 25, 27, and 29 are separately patentable for at least the additional reasons discussed below.

Claim 25, for example, depends from Claim 1, and thus includes all recitations of Claim 1 as discussed above. In addition, Claim 25 recites that the video programming content comprises first video programming content, that the transmission request comprises a first transmission request, and that selecting one of the broadcast network or the broadband network comprises selecting the broadcast network. Claim 25 also includes:

- identifying second video programming content to be transmitted based on a second transmission request wherein the first and second transmission requests are different;

- selecting the broadband network for transmission of the second video programming content based upon characteristics of the second transmission request comprising a second future time at which the second video programming content is requested to be viewed, the selection of the broadband network being based at least in part on an option of delivering the second video programming content either at a time that the second request is received or at the future time; and

- transmitting the second video programming content on the broadband network.

Moreover, Claim 1 (from which Claim 25 depends) states that "the broadcast network and the broadband network are different." In support of the rejection of Claim 25, the Final Office Action states that:

The combined Ellis references provide heterogeneous distribution comprising both a "broadcast" and a "broadband network". The Rai et al. reference discloses that the particular selection of a particular network including both "broadcast" and a "broadband networks" wherein the particular selection between networks depends on the scheduled time of the request. Taken in combination, the Rai et al. reference teaches that the particular of scheduling of video programming occurs using either of the "broadband" or "broadcast networks" of the combined Ellis references in order to optimally deliver resources using the available networks.

Final Office Action, page 6.

Accepting for the sake of argument that the combined Ellis references provide heterogeneous distribution comprising both broadcast and broadband networks which

are different, it would not be obvious combine Rai with the Ellis references as suggested in the Final Office Action. In particular, the Ellis '526 patent discusses television systems (the '529 patent, col. 3, line 11, and col. 10, line 13) with communications paths such as satellite links, telephone network links, cable or fiber optic links, microwave links, Internet links, or combinations of such paths (the '529 patent, col. 3, lines 23-28), and the Ellis '790 publication discusses a television program guide system. In contrast, Rai states that:

The communications network 11 may comprise a computer network, for example a plurality of personal computers, workstations or the like at the node elements 12 connected by a local area network, comprising a link element. The link elements may comprise a wide area network, broadband network, e.g. ATM or SDH or the like. ...

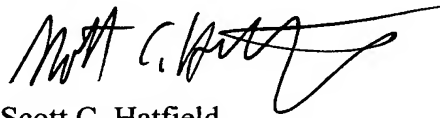
Rai, col. 5, lines 44-49. The Applicants respectfully submit that it would not be obvious to somehow selectively combine aspects of the computer network of Rai with the television systems of the Ellis references to somehow teach or suggest the method of Claim 25.

For at least the reasons discussed above, the Applicants respectfully submit that Claim 25 is separately patentable over the combination of the '526 patent, the '790 publication, and Rai. The Applicants further submit that dependent Claims 27 and 29 are separately patentable for reasons similar to those discussed above with regard to Claim 25. In addition, dependent Claims 26, 28, and 30 are patentable at least as per the patentability of Claims 25, 27, and 29 from which they depend.

CONCLUSION

Accordingly, the Applicants submit that all pending claims in the present application are in condition for allowance, and allowance of all claims is respectfully requested in due course. The Examiner is encouraged to contact the undersigned attorney by telephone if any additional issues should need to be addressed.

Respectfully submitted,

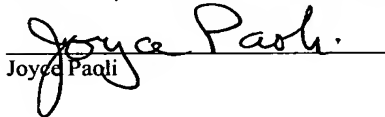


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